

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)
013192.0101PTUS
(Formerly 13192.101)

First named inventor: Young Baeg Hur

Application No.: 10/040,756

Art Unit: 3764

Filed: December 29, 2001

Examiner: Amerson, Lori Baker

Title: Waist Strengthening And Rehabilitating Apparatus And Load Controller Therefor

Attention: Office of Petitions

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

FAX: (703) 308-6916

NOTE: If information or assistance is needed in completing this form, please contact
Petitions Information at (703) 305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee -- required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

☒ Small entity - fee \$665.00 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☐ Other than small entity - fee \$_____ (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in
the form of _____ (identify type of reply):

- ☐ has been filed previously on _____.
- ☐ is enclosed herewith.

B. The issue fee, publication fee, and advance order for ten (10) copies of \$ 995.00

- ☐ has been paid previously on _____.
- ☒ is enclosed herewith.

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This collection of information is required by 37 CFR 1.137. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

3. Terminal disclaimer with disclaimer fee


- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$_____ for a small entity or \$_____ for other than a small entity) disclaiming a period equivalent to the period of abandonment is enclosed herewith (see PTO/SB/63).

4. Statement. The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D))]. See attached explanation.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

April 9, 2004

Date


Signature

Carl A. Forest

Telephone

Number: (303) 894-6114

Typed or printed name

Patton Boggs LLP
1660 Lincoln Street, Suite 2050

Address

Denver, CO 80264

Address

Enclosures: ☒ Fee Payment (2 for a total of 2 pages)

☐ Reply

☐ Terminal Disclaimer Form

☒ Additional sheets containing statements establishing unintentional delay (1 page attached hereto)

☒ Other : Fee(s) Transmittal originally furnished with the Notice Of Allowance And Fee(s) Due (1 page); Revised Formal Drawings as required by the Examiner in the Notice Of Allowability (18 sheets - 24 figures)

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(A)]

I hereby certify that this correspondence is being:

☒ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: **Mail Stop Petition**, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

☐ transmitted by facsimile on the date shown below to the Patent and Trademark Office at (703) 308-6916.

April 9, 2004

Date


Signature

Elaine C. VonSpreckelsen

Typed or printed name of person signing certificate

STATEMENT REGARDING THE CAUSE OF UNINTENTIONAL DELAY

A letter was sent to the client enclosing the Notice Of Allowance And Fee(s) Due and the Notice Of Allowability issued in the instant application on January 20, 2004 via Federal Express. A copy of the Allowed Claims and Possible Divisional Claims were included, as well as a request for a corrected FIG. 1 as required by the Examiner. The client was asked to respond as to whether a divisional application should be filed and grant authorization of payment of the issue and publication fees "well before the due date of **March 16, 2004.**" Because no response had been made by the client, a reminder copy of the January 20, 2004 letter was faxed to the client on February 18, 2004. On March 11, 2004, the above-signed attorney's assistant, Elaine C. VonSpreckelsen, again faxed a copy of the January 20, 2004 letter to the client with the following note: *"URGENT – We will not pay the issue fee until you have authorized us to do so. Also, we still need the revised drawing. Please correspond with us either way."* The request regarding a divisional application and the due date were highlighted. A copy of the March 11, 2004 faxed reminder letter was also emailed to the client on March 11, 2004 at 3:17 p.m.

On March 29, 2004, a confirmation letter dated March 12, 2004 was received by the above-signed attorney's assistant, Elaine C. VonSpreckelsen, from the client, giving the above-signed attorney instructions to file a divisional application and pay the issue and publication fees, and included the corrected FIG. 1. The letter indicated it had been faxed to the above-signed attorney, but no fax had ever been received by him. Upon further investigation by Ms. VonSpreckelsen, the following was determined: (1) the fax was received March 12, 2004 at 2:30 A.M.; (2) the fax was forwarded by a member of the General Services Department to the IP Department File Clerk, Cheryl Martinez, on March 12, 2004 at 10:32 A.M.; (3) the fax was never electronically forwarded or printed out and given to the above-signed attorney.

The procedure by which Cheryl Martinez prints and date stamps all incoming faxes to the IP Department is in place to create a proper legal record of the receipt of documents and a definite and reliable channel to assure that all faxes are timely delivered to the responsible attorney. Cheryl Martinez is a well-trained person who has reliably performed the task of date stamping and delivering faxes to the responsible attorney for approximately five years. In the approximately five years, this is the first known instance of a fax not being properly and timely delivered.

Delay in response by the client and human error on the part of a worthy and reliable employee caused the instant application to become abandoned for failure to pay the issue and publication fees in a timely manner. The employee was sufficiently trained and experienced with regard to the function and routine for her performance that reliance upon such employee represented the exercise of due care.

The above-signed attorney was on vacation the weeks of March 29 – April 9, 2004, and was only made aware of the abandonment while on vacation. He has returned to the office from vacation early to prepare this Petition. The above-signed attorney hereby petitions the Commissioner to revive the instant application and issue the patent with the knowledge that a Patent Term Adjustment will be applied.